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Seller Requirements for Small Balance Commercial Loan

This chapter defines the Seller requirements for DB Structured Products, Inc. Small Balance Commercial Loan products, and includes:

- Eligibility Standards
- Seller Representations and Warranties
- Seller Defaults and Remedies

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Eligibility Standards

Eligibility Standards

Sellers that meet the requirements in this guide will be considered for approval as a DB Structured Products, Inc. Seller. The following are general requirements:

- Seller is a Fannie Mae, Freddie Mac or HUD approved Seller of Small Balance Commercial Loans in good standing;
- Seller's staff must be proficient in originating mortgage loans. Written policies and procedures for mortgage loan origination, secondary marketing and quality control must be in place;
- Seller has satisfactory lines of credit, working capital or other established means to support advances on and repurchases of Small Balance Commercial Loans;
- Seller is in compliance with all capital requirements and any other qualifying factors specified by all regulatory authorities and agencies having jurisdiction over the Seller;
- Seller must maintain a minimum audited net worth of \$400,000 and must have been in operation for the last two (2) years;
- Seller must be licensed by the appropriate regulatory agency or agencies in locations it originates first and second lien residential mortgage loans and/or first lien small balance commercial mortgage loans for submission to DB Structured Products, Inc.;
- Seller must be in compliance with the Fair Housing Act, the Equal Credit Opportunity Act and all applicable state and federal fair lending laws and regulations;
If the Seller has been cited by any regulatory authority for violating any fair lending laws or regulations, Seller must prove to DB Structured Products, Inc.'s satisfaction that corrective action to remedy such violation has been taken;
- Seller must provide DB Structured Products, Inc. adequate references from secondary market investors, banks and mortgage insurers.
- Seller is a member of MERS in good standing if Seller has notified DB Structured Products, Inc. that Seller is a member of MERS.

DB Structured Products, Inc. reserves the right to consider other factors it deems appropriate in the Seller approval process. Compliance with the preceding qualifying factors does not ensure that the applicant will be approved as a DB Structured Products, Inc. Seller.

Chapter 3—Seller Requirements for Small Balance Commercial Loan**Third-Party Originators**

Third-Party Originators

The Seller should establish eligibility and qualification standards for any party involved in the origination, processing, underwriting or closing of the Small Balance Commercial Loan when they are relying on a Third-Party Originator's actions or services. The Seller must consider the functions being performed by such Third-Party Originator when they establish the standards and degree to which those standards should be monitored and reviewed. The standards should be reviewed periodically to ensure ongoing qualification of the Third-Party Originator. The Seller is responsible for all Small Balance Commercial Loans from the Seller's mortgage broker and/or correspondent lender.

The Seller is advised to include the following when establishing the Third-Party Originator's eligibility and qualification standards and procedures:

- Obtain and review resumes and references of management and loan origination personnel and be notified of any changes of key management;
- Establish a minimum audited net worth and evaluate the financial viability of the company on an ongoing basis;
- Establish a minimum requirement for errors and omissions insurance and fidelity bond coverage and monitor ongoing compliance with the standard;
- Enter into a contractual agreement that establishes specific representations and warranties related to each party's responsibilities in addition to recourse rights in the event of representation and/or warranty violations; and
- Perform periodic reviews of the Small Balance Commercial Loans originated by third parties to evaluate patterns of delinquency or trends.

In its quality control plan the Seller must include a representative, random sample of its third party Small Balance Commercial Loans from both pre-closing to post-closing quality control audits to ensure the quality of the Small Balance Commercial Loans.

Fidelity Bond, Errors and Omissions Coverage

The Seller must maintain, at all times and at its own expense, a fidelity bond, and errors and omissions insurance coverage against losses by the Seller of at least \$500,000. These policies must provide coverage against losses resulting from dishonest or fraudulent acts committed by the Seller's employees, any employees of outside firms that provide data processing services for the Seller, and temporary employees.

The fidelity bond should protect DB Structured Products, Inc. against dishonest or fraudulent acts by the Seller's principal owner(s). The Seller must also acquire a surety bond to cover any officers/principals not covered by the

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Independent Auditor's Opinion

fidelity bond. Each fidelity bond and errors and omissions insurance policy must provide for:

- The addition of DB Structured Products, Inc. as “loss payee”;
- The right of DB Structured Products, Inc. to file a claim directly with the insurer if the Seller fails to file a claim for a covered loss incurred by DB Structured Products, Inc.;
- Notification to DB Structured Products, Inc. at least 30 days before the insurer cancels, reduces, imposes a restrictive modification or declines to renew the Seller's coverage;
- Notification to DB Structured Products, Inc. within ten (10) days after the insurer receives a request from the Seller to cancel or decrease any coverage.

The Seller must notify DB Structured Products, Inc. of all cases of material theft, embezzlement or fraud and all claims made against the insurer within ten (10) days after the occurrence.

Annually, the Seller must provide DB Structured Products, Inc. with current certificates of insurance evidencing the Seller's fidelity bond and errors and omissions insurance. If the Seller does not provide this evidence or if coverage does not meet the requirements of this guide, an Event of Seller Default will have occurred.

Independent Auditor's Opinion

The Seller's most recent annual financial statements must include an unqualified opinion from an independent auditor.

Annual & Continuing Seller Obligations

To remain an eligible Seller, the Seller must comply with the eligibility standards currently in effect and its continuing obligations as defined in the *Deutsche Bank Correspondent Lending Seller Guides*.

DB Structured Products, Inc. has sole and absolute right to amend any or all continuing eligibility standards for a Seller based upon the current financial strength, volume and performance of the Seller.

Financial Statements

Within 90 days after the end of Seller's fiscal year, the Seller must provide the following:

- A certification executed by a senior officer of the Seller certifying compliance with the current DB Structured Products, Inc. Seller

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Audits and Inspections

eligibility standards of the Seller Agreement and the *Deutsche Bank Correspondent Lending Seller Guides*;

- Current annual financial statement issued by an independent auditor including an auditor's opinion on the Seller's internal accounting controls.
- If requested by DB Structured Products, Inc., the Seller must provide its quarterly unaudited financial statements within 30 days after the end of each quarter.

Audits and Inspections

The Seller agrees to allow DB Structured Products, Inc. to conduct an audit or inspection at any office of the Seller during regular business hours. During such audits or inspections, the Seller will make available to DB Structured Products, Inc. the aid of a knowledgeable and responsible individual and will grant DB Structured Products, Inc. access to all books, records and files pertaining to:

- The Small Balance Commercial Loans sold to DB Structured Products, Inc.; and
- The Seller's compliance with the terms and provisions of the Seller Agreement and *Deutsche Bank Correspondent Lending Seller Guides*.

Quality Control

The Seller must have a quality control program to ensure the accuracy of origination documents and subjectivity of underwriting decisions from both a sound judgment and program compliance standpoint. The program must assess the overall quality of Small Balance Commercial Loan production on an ongoing basis and must be in writing stating the objectives, scope, policies and procedures of the examination. The program must comply with requirements set by Fannie Mae, Freddie Mac or HUD.

Individual Small Balance Commercial Loan Audit

The Seller must perform a Small Balance Commercial Loan audit on any Small Balance Commercial Loan upon the written request of DB Structured Products, Inc. The Seller must determine if the Small Balance Commercial Loan was prudently originated and if an Event of Seller Default has occurred. The Seller must deliver the results of the Small Balance Commercial Loan audit to DB Structured Products, Inc. within a time frame requested by DB Structured Products, Inc. The results of the Small Balance Commercial Loan audit should be sent to:

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Disclosure of Information

Attn: Securitized Products Group—Correspondent Lending
DB Structured Products, Inc.
6000 Broken Sound Parkway, Suite 104
Boca Raton, Florida 33487

Any audit on a Small Balance Commercial Loan for which foreclosure proceedings have been instituted shall be completed in a thorough and timely manner. However, if the investigation concludes that an Event of Seller Default has occurred, the Seller will be requested to repurchase the Small Balance Commercial Loan, the property, or reimburse DB Structured Products, Inc. for its loss, depending on the stage of the foreclosure.

Disclosure of Information

The Seller agrees to disclose to DB Structured Products, Inc. any insurer or third party information that may be pertinent to the performance of the Seller pursuant to the Seller Agreement. The Seller also consents to the disclosure by DB Structured Products, Inc. of any information held by DB Structured Products, Inc. concerning the Seller to such insurers or third parties and their employees. The Seller releases and agrees to hold harmless DB Structured Products, Inc., and any insurer or third party which discloses information as provided above, from and against all claims or liabilities arising in connection with such disclosure.

Disclosure of Borrower Information

DB Structured Products, Inc. has the right to use Borrower and Small Balance Commercial Loan information in connection with its secondary marketing operations, credit scoring, and the servicing of Small Balance Commercial Loans.

As required by applicable law, DB Structured Products, Inc. will hold in confidence any Small Balance Commercial Loan information, including, but not limited to, any Borrower Information. Borrower Information received by DB Structured Products, Inc. will not be disclosed to a third party, unless disclosure is permitted or required by law. The loan servicer servicing the Small Balance Commercial Loans on behalf of DB Structured Products, Inc. will report Borrower Information to the credit repositories.

Credit Reporting

Seller understands and agrees that DB Structured Products, Inc. may report information about any application for a Small Balance Commercial Loan that DB Structured Products, Inc. believes to contain misrepresentations and/or irregularities to the applicable regulatory agency and to any mortgage industry background database, including, but not limited to, databases operated by Mortgage Asset Research Institute, Inc., such as the Mortgage Industry Data



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Confidentiality

Exchange ("MIDEX"). Seller agrees that it and its employees may be named as the originating entity or Loan officer(s) on any such Small Balance Commercial Loan. Seller acknowledges the importance of DB Structured Products, Inc.'s right and necessity to disclose such information. Seller, for itself and its directors, officers and employees, and their respective successors and/or assigns hereby releases DB Structured Products, Inc., its Affiliates and ultimate parent corporation, and their respective directors, officers, agents, and employees, successors and/or assigns and Mortgage Asset Research Institute, Inc., from any and all damage, loss, liability, cost, actions, causes of action, claims, demands or expense both direct and indirect (including without limitation reasonable legal and accounting fees and expenses actually incurred) that may arise from the reporting or use by any database subscriber of any information submitted by DB Structured Products, Inc. with respect to Seller and its employees to any mortgage industry background database, including MIDEX.

Confidentiality

"Confidential Information" means all confidential or proprietary information of either Seller or DB Structured Products, Inc., including but not limited to (i) information regarding the Purchase Price for the Small Balance Commercial Loans; (ii) such information in the possession of DB Structured Products, Inc. as to Seller's financial condition or underwriting guidelines; (iii) such information in the possession of Seller with respect to DB Structured Products, Inc.'s loan programs, underwriting policies and guidelines, credit criteria, and business practices; and (iv) all information relating to the loans offered for purchase or purchased under the Seller Agreement, including all Borrower Information. "Confidential Information" shall not include any information that: (i) enters the public domain through no fault of the receiving party; (ii) is known by the receiving party at the time it is disclosed by the disclosing party, as shown by the receiving party's records; (iii) with the exception of Borrower information, is independently developed by the receiving party at any time, as shown by the receiving party's records; or (iv) is rightfully obtained by the receiving party from an independent third party who does not have an obligation of confidentiality to the disclosing party.

"Borrower Information" means all information provided by any Borrower and all information related to any Borrower, regardless of whether either party's relationship with the Borrower ceases, including any non-public personal information as defined by federal law, including, but not limited to, the Gramm-Leach-Bliley Act, as it may be amended, any regulations promulgated thereunder, and any other Borrower or customer information protected by applicable state law.

All Confidential Information shall be held in the strictest confidence and will not be disclosed by the receiving party or its directors, officers, employees, affiliates, agents, advisors or representatives (collectively, the "Representatives"), except as specifically permitted by the *Deutsche Bank Correspondent Lending Seller Guides* or the Seller Agreement. The receiving

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Seller Representations and Warranties

party and its Representatives will not disclose or communicate the Confidential Information in any manner whatsoever, directly or indirectly, to any third party without the prior written consent of the disclosing party, unless disclosure is permitted under this Section or required by court order, subpoena, government requirements, or similar process. Seller and DB Structured Products, Inc. further agree that the Confidential Information will be disclosed only to such of its Representatives who need to examine the Confidential Information for the purposes described above.

Seller and DB Structured Products, Inc. shall take all appropriate precautions to keep confidential the Confidential Information and to assure observation of this requirement by their Representatives. The Confidential Information shall remain the exclusive property of the disclosing party, except that all Confidential Information relating to any loan purchased under the Seller Agreement and the *Deutsche Bank Correspondent Lending Seller Guides* shall be the exclusive property of DB Structured Products, Inc. Seller shall maintain such copies of the Borrower Information as is required by law.

Seller Representations and Warranties

The Seller accepts that DB Structured Products, Inc. purchases Small Balance Commercial Loans in reliance upon the accuracy and truth of the Seller's representations and warranties and upon the Seller's adherence with the terms and conditions in the Seller Agreement and *Deutsche Bank Correspondent Lending Seller Guides*. All representations and warranties are complete and the Seller is fully liable for any misstatement or breach of warranty regardless of whether the Seller or DB Structured Products, Inc. actually had, or reasonably could have been expected to obtain, knowledge of the facts giving rise to such misstatement or breach of warranty.

The Seller represents and warrants to DB Structured Products, Inc. that the statements contained in the *Deutsche Bank Correspondent Lending Seller Guides* are true. Making these representations and warranties does not release the Seller from its obligations under other sections of the *Deutsche Bank Correspondent Lending Seller Guides*.

As of the Purchase Date and the date of transfer and conveyance of any Small Balance Commercial Loan to DB Structured Products, Inc., Seller represents and warrants to DB Structured Products, Inc. as follows:

Due Organization and Good Standing

Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and is qualified to do business in those states in which such qualification is required.

Chapter 3—Seller Requirements for Small Balance Commercial Loan**Seller Representations and Warranties****Ordinary Course of Business**

All corporate or other actions required to be taken by or on behalf of Seller to authorize its execution of the Seller Agreement and the performance of its obligations hereunder have been fully and properly taken. The execution and consummation of the Seller Agreement and the sale of Small Balance Commercial Loans contemplated hereunder are in the ordinary course of Seller's business and do not and will not: (i) violate any corporate charter or articles or organizational document; corporate bylaw; contract, indenture, agreement, covenant or understanding by which Seller is bound or to which it is a party; or applicable law or regulation or any judgment, order or decree of any court or governmental authority; or (ii) require the consent of any governmental authority or other person (unless such consent has been obtained); or (iii) hinder, delay or defraud any of Seller's creditors; or (iv) render Seller insolvent.

No Conflicts

The execution of the Seller Agreement and the consummation of the transactions contemplated hereby will not subject DB Structured Products, Inc. to any liability, duty or obligation arising from any acts, whether of omission or commission, of Seller, or of any of Seller's officers, directors, partners, agents or employees, taking place on or prior to the date hereof, except the duties and obligations of Seller to Borrowers under the terms of the Small Balance Commercial Loan and the laws applicable thereto.

Financial Statements

The assets, liabilities and net worth of Seller are fairly presented in the Financial Statements as of the date previously delivered by Seller to DB Structured Products, Inc., and there has been no material adverse change therein as of the effective date of this representation. As of the date hereof, Seller has filed all tax returns required to be filed, or has requested and been granted extensions thereof, and all taxes due and payable to the date thereof are fully paid or properly and sufficiently accrued in said statements.

Liabilities

Seller has no liability or obligation of any nature, secured or unsecured, whether accrued, absolute, contingent or otherwise, which will have a material adverse effect on the Small Balance Commercial Loans or the performance of Seller's obligations under the Seller Agreement and the *Deutsche Bank Correspondent Lending Seller Guides*.

No Litigation Pending

Seller is in compliance with all applicable laws and regulations. There are no actions, suits or proceedings at law, in equity or otherwise, pending or, to the knowledge of Seller, threatened, against Seller in any court or before any

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federal, state or local administrative or regulatory agency or instrumentality or before any arbitrator or panel of arbitrators the adverse outcome of which would have an adverse effect on Seller's title to any Small Balance Commercial Loan which may be sold or purchased hereunder or would have a material adverse effect on Seller's financial condition, assets, business or the performance of its obligations under the Seller Agreement and the *Deutsche Bank Correspondent Lending Seller Guides* or which questions the validity of the Seller Agreement or of any action taken or to be taken pursuant thereto.

No Insolvency, Fair Consideration

Seller is not insolvent, the sale of any Small Balance Commercial Loan will not cause Seller to become insolvent and Seller is not aware of any pending insolvency. The consideration received by Seller upon the sale of any Small Balance Commercial Loan under the Seller Agreement and the *Deutsche Bank Correspondent Lending Seller Guides* constitutes fair consideration and reasonably equivalent value for the Small Balance Commercial Loan.

Compliance with Law

The Seller has obtained all licenses and effected all registrations required under local, state and federal laws, regulations and orders by virtue of any of the activities conducted, or property owned, by the Seller.

The sale and transfer of each Small Balance Commercial Loan to DB Structured Products, Inc. does not violate any appropriate state laws. The Seller must notify DB Structured Products, Inc. in writing of any restrictions by state law on the transfer of any Small Balance Commercial Loan and any related state licensing or registration requirements.

Execution of Documents

All agreements, contracts, assignments, endorsements, checks, drafts, reports, Small Balance Commercial Loan documents or other documents associated with a Small Balance Commercial Loan have been properly executed by an officer of the Seller, pursuant to a duly adopted Resolution of Board of Directors, as required by the *Deutsche Bank Correspondent Lending Seller Guides*.

No Judgments Against DB Structured Products, Inc.

The Seller has no judgment, court order, claim, counterclaim, defense, right of set-off, or equivalent right against DB Structured Products, Inc.

Seller Agreement Warranties

The representations and warranties made by Seller at the time of the execution of the Seller Agreement remain true, correct and complete.

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Additional Seller Representations and Warranties Regarding the Bulk Small Balance Commercial Mortgage Loans

Loan Origination

The Seller is an approved seller/servicer for Fannie Mae or Freddie Mac in good standing or a mortgagee approved by the United States Department of Housing and Urban Development pursuant to Section 203 and 211 of the National Housing Act or a savings and loan association, a savings bank, a commercial bank or similar institution which is supervised and examined by a federal or state authority.

Proof of Compliance

Upon request, the Seller must furnish evidence acceptable to DB Structured Products, Inc. of its compliance with all representations and warranties contained in the *Deutsche Bank Correspondent Lending Seller Guides* and due diligence to ensure such compliance.

Seller Agreement

When duly executed and delivered by Seller, the Seller Agreement will constitute a legal, valid and binding obligation of the Seller enforceable against Seller in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other laws relating to or affecting the rights of creditors generally, and by general equity principles.

MERS

If Seller has notified DB Structured Products, Inc. that Seller is a member of MERS, Seller is a member of MERS in good standing, and will comply in all material respects with the rules and procedures of MERS in connection with the servicing of the Small Balance Commercial MERS Loans for as long as such Small Balance Commercial Loans are registered with MERS.

Additional Seller Representations and Warranties Regarding the Bulk Small Balance Commercial Mortgage Loans

HUD Approved

The Seller is a HUD approved mortgagee pursuant to Section 203 of the National Housing Act, and no event has occurred, including but not limited to a change in insurance coverage, which would make the Seller unable to comply with HUD eligibility requirements or which would require notification to HUD.

Owner Of Record - Retention Of Files

Immediately prior to the payment of the Bulk Purchase Price for each Bulk Small Balance Commercial Mortgage Loan, the Seller was the owner of record

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Representations and Warranties Regarding Small Balance Commercial Loans

of the related Security Files Instrument and the indebtedness evidenced by the related Mortgage Note and upon the payment of the Bulk Purchase Price by DB Structured Products, Inc., in the event that the Seller retains record title, the Seller shall retain such record title to each Security Instrument, each Assignment of Leases, each related Mortgage Note and the related Mortgage Files with respect thereto in trust for DB Structured Products, Inc. as the owner thereof and only for the purpose of servicing and supervising the servicing of each Bulk Small Balance Commercial Mortgage Loan.

Fair Consideration

The consideration received by the Seller upon the sale of the Bulk Small Balance Commercial Mortgage Loans constitutes fair consideration and reasonably equivalent value for such Bulk Small Balance Commercial Mortgage Loans.

Representations and Warranties Regarding Small Balance Commercial Loans

The representations and warranties pertaining to each Small Balance Commercial Loan purchased by DB Structured Products, Inc. survive the Purchase Date with respect to the Small Balance Commercial Loan, and any termination of the Seller Agreement, and are not affected by any investigation made by or on behalf of DB Structured Products, Inc. As of the Purchase Date and the date of transfer and conveyance of any Small Balance Commercial Loan to DB Structured Products, Inc., Seller represents and warrants to DB Structured Products, Inc. as follows:

Small Balance Commercial Loan Provisions

The Seller guarantees that terms of each Small Balance Commercial Loan delivered to DB Structured Products, Inc. have not been impaired, waived, altered, or modified in any respect, unless approved in writing by DB Structured Products, Inc.

Small Balance Commercial Loan Documents

The Seller guarantees that all Small Balance Commercial Loan documents have been completed, properly executed, and delivered in accordance with the *Deutsche Bank Correspondent Lending Seller Guides*. All originals and copies of such documents and all other documents, materials, and other information required to be submitted to DB Structured Products, Inc. are complete and accurate. All Small Balance Commercial Loan documents and all other documents describing or otherwise relating to the Small Balance Commercial Loans are in compliance with all applicable local, state and federal laws and regulations.

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Representations and Warranties Regarding Small Balance Commercial Loans

Ownership Transfer

The Seller has good title to and is the sole owner of each Small Balance Commercial Loan sold to DB Structured Products, Inc.

Seller has provided certified copies of the intervening assignment, if any, of the Seller's beneficial interest in the Security Instrument, showing a complete chain of title from origination to the Seller, including warehouse assignment, with evidence of recording thereon or a release of any intervening assignee's interest, if any, in the event that such assignment was not recorded.

Seller has provided certified copies of the intervening assignment, if any, of the Seller's beneficial interest in the Assignment of Leases, showing a complete chain of title from origination to the Seller, including warehouse assignment, with evidence of recording thereon or a release of any intervening assignee's interest, if any, in the event that such assignment was not recorded.

The Seller has not transferred, sold or assigned any right or interest in any Small Balance Commercial Loan, and no other party has any option or right of first refusal or other arrangement to acquire, directly or indirectly, the Small Balance Commercial Loan.

The Seller's valid assignment transfers such Small Balance Commercial Loan to DB Structured Products, Inc. free and clear of any pledge, lien, or security interest or other encumbrance.

No Default

There is no default, breach, violation or event of acceleration existing under any Note, Assignment of Leases or Security Instrument purchased by DB Structured Products, Inc. and no event which, with the passage of time or with notice and the expiration of any grace or cure period would constitute a default, breach, violation or event of acceleration, and Seller has not waived any such default, breach, violation or event of acceleration.

No Defenses

The Small Balance Commercial Loan is genuine in every respect and the Borrower was competent at the time of execution of the Small Balance Commercial Loan and any instruments related thereto.

The Borrower has no right of set-off, defense, counterclaim or right of rescission as to any Small Balance Commercial Loan document, nor will the operation of any of the terms of the Note, the Assignment of Leases or the Security Instrument, or the exercise of any rights thereunder, render either the Note, the Assignment of Leases or the Security Instrument unenforceable, in whole or in part or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto.

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Representations and Warranties Regarding Small Balance Commercial Loans

None of the Borrowers, endorsers, sureties or guarantors obligated on the Small Balance Commercial Loan is the subject of any proceeding in bankruptcy, or is currently involved in litigation with Seller. None of the Borrowers, endorsers, sureties or guarantors obligated on the Small Balance Commercial Loan is deceased.

Compliance with Law

Each action taken by Seller with respect to the Small Balance Commercial Loan and each Note, Small Balance Commercial Loan application, agreement, form, letter, notice, statement, or other material used by Seller in connection with the origination, servicing and sale of each such Small Balance Commercial Loan, complies in all respects with all applicable laws and regulations including without limitation: the Consumer Credit Protection Act and Regulation Z under Title I thereof laws respecting obtaining and/or using credit reports and other information concerning individuals (including, without limitation, the Fair Credit Reporting Act); the Equal Credit Opportunity Act and Regulation B thereunder; laws relating to unfair, deceptive, or unconscionable acts and practices; laws governing the sale of insurance (including, without limitation, credit life insurance); federal laws and regulations relating to such Small Balance Commercial Loan (including, without limitation, the Real Estate Settlement Procedures Act of 1974, as amended and Regulation X); the Flood Disaster Protection Act; usury laws; and all other applicable federal, state and local statutes, regulations, ordinances, and administrative rulings applicable to mortgage lending, consumer protection, telephone solicitation and telemarketing.

The transfer of any Small Balance Commercial Loan to DB Structured Products, Inc. or any act provided for in the *Deutsche Bank Correspondent Lending Seller Guides* will not involve the violation of any law, regulation or order. This warranty is made by the Seller with respect to each Small Balance Commercial Loan application taken and each Small Balance Commercial Loan made by the Seller or any third party. The Seller further warrants that, to the best of its knowledge, the funds utilized by the Borrower in the purchase of the Mortgaged Property and the related Small Balance Commercial Loan were not obtained through trafficking of illegal substances or through any illegal activity.

Casualty Insurance

The Mortgaged Property has a hazard insurance policy in full force against loss by fire and other hazards as required by the *Deutsche Bank Correspondent Lending Seller Guides*, including flood insurance if required under the National Flood Insurance Act of 1968 as amended.

The policy contains a mortgagee clause insuring the Seller, its successors and assigns. The Security Instrument obligates the Borrower to maintain such insurance at the Borrower's expense, and failure to do so authorizes the security instrument holder to acquire and maintain such insurance at the Borrower's expense and seek restitution from the Borrower.



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Representations and Warranties Regarding Small Balance Commercial Loans

With respect to each Mortgaged Property, such Mortgaged Property is required pursuant to the related Security Instrument to be (or the holder of the Security Instrument can require that the Mortgaged Property be), and at origination the Seller received evidence that such Mortgaged Property was, insured by a multi-family, commercial or mixed-use general liability insurance policy (as applicable) in amounts as are generally required by multi-family, commercial and mixed-use mortgage lenders (as applicable) for similar properties, and in any event not less than \$1,000,000 per occurrence.

Each Small Balance Commercial Loan provides that casualty insurance proceeds will be applied either to the restoration or repair of the related Security Instrument Property or to the reduction of the principal amount of the Small Balance Commercial Loan. Each Security Instrument provides that any related insurance proceeds, other than for a total loss or taking, will be applied either to the repair or restoration of all or part of the related Mortgaged Property, with the mortgagee or a trustee appointed by the mortgagee having the right to hold and disburse such proceeds as the repair or restoration progresses (except in such cases where a provision entitling another party to hold and disburse such proceeds would not be viewed as commercially unreasonable by a prudent multi-family, commercial and mixed-use mortgage lender (as applicable)), or to the payment of the outstanding principal balance of the Small Balance Commercial Loan together with any accrued interest thereon, and any insurance proceeds in respect of a total or substantially total loss or taking may be applied either to payment of outstanding principal and interest on the Small Balance Commercial Loan (except as otherwise provided by law) or to rebuilding of the Mortgaged Property.

The Seller will take all necessary action to ensure that all insurance carriers are notified of the Small Balance Commercial Loan and servicing sale prior to the date of transfer.

Underwriting

The Small Balance Commercial Loan has been prudently originated and underwritten by the Seller in compliance with all requirements of the *Deutsche Bank Correspondent Lending Seller Guides*.

Title Insurance

The Small Balance Commercial Loan is covered by an ALTA lender's title insurance policy (which, in the case of an adjustable rate Small Balance Commercial Loan has an adjustable rate mortgage endorsement in the form of ALTA 6.0 or 6.1), issued by a title insurer acceptable to DB Structured Products, Inc., and qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring (subject to the exceptions contained in the *Deutsche Bank Correspondent Lending Seller Guides*) the Seller, its successors and assigns as to the first priority lien of the mortgage in at least the original principal amount of the Small Balance Commercial Loan and, with respect to any adjustable rate Small Balance Commercial Loan, against any loss by reason of the invalidity or unenforceability of the lien resulting from the

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Representations and Warranties Regarding Small Balance Commercial Loans

provisions of the Security Instrument providing for adjustment in the Mortgage Interest Rate and Monthly Payment. Additionally, such lender's title insurance policy affirmatively insures ingress and egress to and from the Mortgaged Property, and against encroachments by or upon the Mortgaged Property or any interest therein.

The Seller is the sole insured of such lender's title insurance policy, and such lender's title insurance policy is in full force and effect and will be in full force and effect on the Purchase Date and the date of transfer and conveyance of the Small Balance Commercial Loan to DB Structured Products, Inc. No claims have been made under such lender's title insurance policy, and no prior holder of the related Security Instrument, including the Seller, has done, by act or omission, anything which would impair the coverage of such lender's title insurance policy. The scope or time period of such policy shall not be limited in any manner. In addition, the policy must comply with the requirements of this *Deutsche Bank Correspondent Lending Seller Guides*.

Liens

Security Instruments transferred to DB Structured Products, Inc. constitute a valid first lien on the Mortgaged Property, including all improvements on the Mortgaged Property and all additions, alterations and replacements made at any time with respect to the foregoing and provides for an assignment of rents, income and profits from the Mortgaged Property or, if the Mortgage does not so provide, a separate assignment of all rents, income and profits from the Mortgaged Property and any required UCC-1 Financing Statement were executed by the Mortgagor and creates a valid, existing and enforceable lien and security interest of the same priority as the lien of the Mortgage. Such lien is subject only to Permitted Encumbrances. Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Small Balance Commercial Loan establishes and creates a valid, subsisting and enforceable first lien and first priority security interest on the property described therein and the Seller has the full right to sell and assign the same to the DB Structured Products, Inc. No Small Balance Commercial Loan is a second lien Small Balance Commercial Loan. Each Security Instrument, Assignment of Leases and all related documents that are required to be recorded or filed under applicable law in order to preserve in favor of DB Structured Products, Inc. the validity and enforceability of the security instrument and the liens created thereby, have been duly recorded in all appropriate recording offices and all associated recording fees or taxes have been paid.

There are no delinquent taxes or delinquent assessment liens against the Mortgaged Property. There are no mechanic's or any other liens affecting the Mortgaged Property, which are superior to or equal with, the lien of the security instrument assigned to DB Structured Products, Inc., except those liens that are insured by the policy of title insurance.

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Survey

All improvements to the Mortgaged Property lie entirely within the boundaries and the building restriction lines of the Mortgaged Property. The policy of title insurance insures DB Structured Products, Inc. and its successors and assigns against loss or damage by reason of any violation, variation, encroachment or adverse circumstance that either is disclosed or would have been disclosed by an accurate survey.

No improvements by adjoining properties encroach upon the Mortgaged Property as to affect the value or marketability of the property.

No Adverse Circumstances

The Mortgaged Property is free of damage and waste, and is in good repair. No notice of condemnation has been given, and no circumstances exist involving the Small Balance Commercial Loan documents, the Mortgaged Property or the Borrower's credit standing that could: (a) cause investors to regard the Small Balance Commercial Loan as an unacceptable investment; (b) cause the Small Balance Commercial Loan to become delinquent; or (c) adversely affect the value or marketability of the Mortgaged Property or the Small Balance Commercial Loan.

The Seller warrants that it has no knowledge of the presence of, or no reasonable grounds to suspect the presence of, any toxic materials or other environmental hazards that could affect the Mortgaged Property. The Seller warrants compliance with local, state or federal law or regulations designed to protect the health and safety of the occupants of the Mortgaged Property and all inspections, licenses and certificates required in connection with the origination of any Small Balance Commercial Loan with respect to the occupancy of the Mortgaged Property have been made or obtained from the appropriate authorities.

The Mortgaged Property is in compliance with applicable zoning regulations. There is no proceeding pending, or to the Seller's knowledge, threatened for the total or partial condemnation of the Mortgaged Property.

Appraisal Representations and Warranties

The appraisal and appraiser meet the qualifications as required by this *Deutsche Bank Correspondent Lending Seller Guides*. The appraiser (i) is not in an "affiliated business arrangement" with Seller (as that phrase is defined under Regulation X promulgated pursuant to the Real Estate Settlement Procedures Act of 1974, as amended); and (ii) was under no compulsion to find any certain value of said real estate.

The market value of the Mortgaged Property, at the time of purchase of the related Small Balance Commercial Loan by DB Structured Products, Inc., is at least equal to the appraised value stated on the Small Balance Commercial Loan appraisal.

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The appraisal of the Mortgaged Property was prepared and signed before Small Balance Commercial Loan purchase. The appraiser had no interest, direct or indirect, in the Mortgaged Property, and the appraiser's compensation (or future earnings) is not affected by the approval or disapproval of the Small Balance Commercial Loan.

It has examined the appraisal report and has concluded the Mortgaged Property is satisfactory collateral for the Small Balance Commercial Loan in accordance with this *Deutsche Bank Correspondent Lending Seller Guides*.

The report adheres to the appropriate appraisal requirements in the *Deutsche Bank Correspondent Lending Seller Guides* and is on the forms required by the *Deutsche Bank Correspondent Lending Seller Guides* appropriate for the property being appraised.

The report is of professional quality and supports all of the appraiser's assumptions, data, analysis, rationale and conclusions that were relied on in estimating the value and marketability of the Mortgaged Property.

The report is accurate, internally consistent, written in understandable language, and sufficiently documented.

All information known to the Seller that may affect the value or marketability has been given to the appraiser with the appraisal request.

The appraisal of the Mortgaged Property complies with the Financial Institutions Reform Recovery and Enforcement Act of 1989 as applicable.

Enforceability

Each Note, Assignment of Leases and Security Instrument is a legal, valid and binding contract with the Borrower enforceable in accordance with its terms except as limited by creditors' rights laws.

The Small Balance Commercial Loan is a good, valid, and subsisting obligation of the Borrower thereon; the Borrower is the true and only obligor thereon, is the real party in interest thereon and is not representative of any other person, group or organization in connection with the Small Balance Commercial Loan. No error, omission, misrepresentation, negligence, fraud or similar occurrence with respect to a Small Balance Commercial Loan has taken place on the part of any person, including without limitation the Borrower, any appraiser, any builder or developer, or any other party involved in the origination of the Small Balance Commercial Loan.

All persons who have or will have an ownership, homestead or dower interest in the Mortgaged Property have signed the Security Instrument or the Assignment of Leases relating to such premises if said signature is permitted.

Each Security Instrument and Assignment of Leases contains customary and enforceable provisions which render the rights and remedies of the holder adequate to realize the benefits of the security against the Mortgaged Property, including:

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- in the case of a Security Instrument designated as a deed of trust, by trustee's sale;
- by summary foreclosure, if available under applicable law; and
- otherwise by foreclosure, and there are no homestead or other exemptions or dower, courtesy or other rights or interests available to the Borrower or the Borrower's spouse, survivors or estate or any other person or entity that would, or could, interfere with such right to sell at a trustee's sale or right to foreclosure.

For each Security Instrument that is a deed of trust, a trustee duly qualified under law to administer as such is properly named, designated and serving.

Apart from a trustee's sale after default by the Borrower, no fees or expenses are owed by the Seller or DB Structured Products, Inc. to the trustee under any Security Instrument that is a deed of trust.

The Security Instrument and the Assignment of Leases has not been released, rescinded, satisfied or subordinated, in whole or in part.

Leaseholds

If allowed in the Small Balance Commercial Loan program guidelines, all leasehold estates comply with the appropriate leasehold warranties set forth in the *Deutsche Bank Correspondent Lending Seller Guides*.

As to each Small Balance Commercial Loan secured by Mortgaged Property which is leased to tenants:

- (A) the Mortgaged Property is not subject to any leases other than the Leases described in the rent roll contained in the Mortgage File, (B) such rent roll is accurate and complete in all material respects, including description of the rent, term, and pay through date, and (C) no Person has any possessory interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of the Leases. Each Lease of all or any portion of the Mortgaged Property is subordinate to the Mortgage, unless otherwise approved by the DB Structured Products, Inc.;
- no Lease contains any option to purchase, any right of first refusal to purchase, or any other similar provisions which adversely affect the Mortgaged Property or which might adversely affect the rights of any holder of the Small Balance Commercial Loan and such Lease is freely assignable. All of the Leases are in full force and effect and have not been modified or amended other than by documents contained in the Mortgage File, and the Mortgage File contains true and complete copies of the Leases;
- (A) neither the Mortgagor (landlord) nor any tenant under any Lease is in default under any of the terms, covenants or provisions of such Lease and (B) no event has occurred which, but for the passage of time or the giving of notice or both, would constitute an event of default under any such Lease; and

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- the Lease Abstracts prepared and delivered by the Seller are accurate and complete in all material respects.

Compliance by Others

When a person or entity: a) originates a Small Balance Commercial Loan on behalf of a Seller; or b) renders any act for a Seller which the Seller is required to render under the *Deutsche Bank Correspondent Lending Seller Guides*, the Seller warrants that such person or entity has conformed to all requirements of the *Deutsche Bank Correspondent Lending Seller Guides* with regard to each and every Small Balance Commercial Loan and act.

Authorized Prior Holders

All parties which have had any interest in the Security Instrument, whether as mortgagee, assignee, pledgee or otherwise, are (a) in compliance with any and all appropriate licensing conditions of law in the state where the Mortgaged Property is located; and (b) organized under the laws of such state, or qualified to do business in such state, or doing business in such state as a qualified foreign corporation in order to use the courts to enforce the Security Instruments.

No Impairment of Insurance

No action, error, omission, misrepresentation, negligence, fraud or similar occurrence with respect to a Small Balance Commercial Loan has taken place on the part of any person, the Borrower, appraiser, builder or developer or any party involved in the origination of the Small Balance Commercial Loan or in the application for any insurance in relation to such Small Balance Commercial Loan that might result in a denial, contesting, failure or impairment of full and timely coverage under any insurance policies or any pool insurance policy required for such Small Balance Commercial Loan.

No Buydowns

The Small Balance Commercial Loan does not contain provisions pursuant to which Monthly Payments are paid or partially paid with funds deposited in any separate account established by the Seller, the Mortgagor or anyone on behalf of the Mortgagor, or paid by any source other than the Mortgagor nor does it contain any other similar provisions currently in effect which may constitute a "buydown" provision.

Holder-In-Due-Course

The Seller is the owner and holder-in-due-course of each Note and is named as mortgagee/beneficiary or assignee under each Security Instrument and Assignment of Leases, and all Small Balance Commercial Loan documents requiring execution have been appropriately executed and witnessed or, as appropriate, notarized by the persons whose names appear as signatories and

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witnesses, or, as appropriate, notaries and constitute the valid and binding legal obligation of the Borrower, enforceable in accordance with their respective terms.

Notwithstanding the foregoing, with respect to adjustable rate Small Balance Commercial Loans, the Seller represents and warrants that there are no claims to the Note on the part of any person or defense or any party to the Note other than those that validly could be raised against a holder-in-due-course.

Escrow Account, No Deficiency in Escrow Deposits or Payments

If the Small Balance Commercial Loan provides for the maintenance of an escrow account for the payment of taxes and insurance: (i) the Small Balance Commercial Loan is in compliance with all applicable state and federal laws concerning escrow accounts; (ii) all required escrow payments have been made by the Borrower; and (iii) the Small Balance Commercial Loan records accurately reflect the amounts in the escrow account, including any interest thereon accruing to the Borrower.

With respect to escrow deposits and payments, all such payments are in the possession of, or under the control of, the Seller. There are no deficiencies in escrow deposits and payments for which repayment arrangements have not been made. No escrow deposits or payments due the Seller have been capitalized under any security instrument.

Disbursement, No Claims or Forbearance

Each Small Balance Commercial Loan has been closed and all funds have been fully disbursed, except as permitted in the *Deutsche Bank Correspondent Lending Seller Guides*. There are no payoffs, assumptions or insurance claims pending on any Small Balance Commercial Loan or the Mortgaged Property. The Borrower has no right under the Small Balance Commercial Loan documents to borrow additional funds secured by the Mortgaged Property without the noteholder's consent. The Seller has not made arrangements with any Borrower for any payment forbearance or future refinancing with respect to any Small Balance Commercial Loan.

Non-Solicitation

The Seller has not solicited or provided information to another party for the purpose of soliciting, and agrees not to solicit or provide information to a third party for the purpose of refinancing any Small Balance Commercial Loan sold to DB Structured Products, Inc.

Non-Standard Documents

Under no circumstances shall DB Structured Products, Inc. be obligated to purchase any Small Balance Commercial Loan that is evidenced or secured by

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non-standard documents. (Standard documents are those generally acceptable to DB Structured Products, Inc.) However, DB Structured Products, Inc. may elect to purchase such a Small Balance Commercial Loan at its sole discretion.

Integrity of Information

The Seller is responsible for credit and property underwriting documentation regardless of the entity providing the information to the Seller. This includes, but is not limited to credit information, appraisals, or other documents or information used in the evaluation of the Small Balance Commercial Loan.

The Seller must ensure that:

- Each Small Balance Commercial Loan sold to DB Structured Products, Inc. has been prudently originated and underwritten;
- All data supplied by or about the Borrower is true, accurate and complete;
- Interested parties are sufficiently independent from the Small Balance Commercial Loan transaction; and
- Sufficient organizational controls exist to ensure the independence, validity and reliability of the Small Balance Commercial Loan.

The Seller is solely responsible for the implementation of prudent practices when relying on third party service providers (such as closing agents, title companies, etc.) to ensure third party service providers comply with its instructions and ensure that the integrity of the Small Balance Commercial Loan transaction has been maintained.

Servicing Documents

The Seller represents and warrants that all required servicing documents have been completed, executed and delivered in the form and manner specified in the *Deutsche Bank Correspondent Lending Seller Guides*, and all documents, materials and other information required to be submitted to DB Structured Products, Inc. have been submitted and are complete and accurate.

The Seller's records for each Small Balance Commercial Loan completely and accurately reflect the facts stated therein. There is due and owing on the Small Balance Commercial Loan the amount represented by Seller to be due thereon; the scheduled payment dates and final maturity date are correctly set forth on the Note and in the Small Balance Commercial Loan records.

The servicing practices used in connection with the servicing of the Small Balance Commercial Loans have been in all respects reasonable and customary in the mortgage servicing industry of like mortgage loan servicers, servicing similar mortgage loans originated in the same jurisdiction as the Mortgaged Property.

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The Seller represents and warrants that it has taken all necessary actions to ensure all insurance carriers are notified of the change in servicing prior to the date of transfer. All insurance policies required to be endorsed are endorsed in the manner specified by DB Structured Products, Inc. These would include, but are not limited to, hazard, flood, and earthquake insurance carriers.

Payment of Insurance and Taxes

The Seller represents and warrants that all insurance, property tax and other payments due from escrow accounts within 60 days after the transfer date, have been paid. These would include, but are not limited to, property taxes, hazard, flood, and earthquake insurance.

Liquidation

The Seller represents and warrants that there are no amounts due on the Small Balance Commercial Loan, including, but not limited to, unpaid installments, and there is no pending payoff or liquidation relating to any Small Balance Commercial Loan being sold to DB Structured Products, Inc.

Compliance by Others

When any person or entity other than the Seller performs services for the Seller which the Seller is required to perform, the Seller represents and warrants that such person or entity has complied and will comply with all requirements of the *Deutsche Bank Correspondent Lending Seller Guides* and that the Seller's quality control and internal audit program includes a sample review of such services.

OFAC

To the extent required by applicable law the Seller has complied with all applicable anti-money laundering laws and regulations, including without limitation the USA Patriot Act of 2001 (collectively, the "Anti-Money Laundering Laws"), has established an anti-money laundering compliance program as required by the Anti-Money Laundering Laws, has conducted the requisite due diligence in connection with the origination of each Small Balance Commercial Loan for purposes of the Anti-Money Laundering Laws, including with respect to the legitimacy of the applicable Borrower and the origin of the assets used by the said Borrower to purchase the property in question, and maintains, and will maintain, sufficient information to identify the applicable Borrower for purposes of the Anti-Money Laundering Laws; no Small Balance Commercial Loan is subject to nullification pursuant to Executive Order 13224 (the "Executive Order") or the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury (the "OFAC Regulations") or in violation of the Executive Order or the OFAC Regulations, and no Borrower is subject to the provisions of such Executive Order or the

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OFAC Regulations nor listed as a “blocked person” for purposes of the OFAC Regulations.

IRS Reporting

The Seller represents and warrants that it will comply with and report to the IRS any points and interest paid by the Borrower and all interest paid to the Borrower by the Seller as of the Purchase Date.

Calculated Interest

Interest on each Small Balance Commercial Loan is calculated on the basis of a 360-day year consisting of twelve 30-day months. Interest is payable in arrears. Payments are due on the first day of every month.

Predatory Lending

No Small Balance Commercial Loan is (a) subject to, covered by or in violation of the provisions of the Home Ownership and Equity Protection Act of 1994, as amended (“HOEPA”) or has an “annual percentage rate” or “total points and fees” payable by the borrower (as each such term is defined under HOEPA) that equal or exceed the applicable thresholds defined under HOEPA (Section 32 of Regulation Z, 12 C.F.R. Section 226.32(a)(1)(i) and (ii)), (b) a “high cost”, “covered”, “abusive”, “predatory”, “home loan”, “Oklahoma Section 10” or “high risk” mortgage loan (or a similarly designated loan using different terminology) under any federal, state or local law, including without limitation, the provisions of the Georgia Fair Lending Act (OGCA Sections 7 6A 1, et seq.), New York Banking Law, Section 6-1, the Arkansas Home Loan Protection Act, effective as of June 14, 2003, Kentucky State Statute KRS 360.100, effective as of June 25, 2003, the New Jersey Home Ownership Security Act of 2002, the New Mexico Home Loan Protection Act (N.M. Stat. Ann. §§ 58-21A-1 et seq.), the Illinois High-Risk Home Loan Act (815 Ill. Comp. Stat. 137/1 et seq.), the Oklahoma Home Ownership and Equity Protection Act, Nevada Assembly Bill No. 284, effective as of Oct. 1, 2003, the Minnesota Residential Mortgage Originator and Servicer Licensing Act (MN Stat. §58.137), the South Carolina High-Cost and Consumer Home Loans Act, effective January 1, 2004, the Massachusetts Predatory Home Loan Practices Act, effective November 7, 2004 (Mass. Ann. Laws Ch. 183C) or any other statute or regulation providing assignee liability to holders of such mortgage loans, or (c) is subject to or in violation of any such or comparable federal, state or local statutes or regulations.

Servicemembers Civil Relief Act

The Borrower has not notified the Seller and the Seller has no knowledge of any relief requested or allowed to the Borrower under the Servicemembers Civil Relief Act.



Chapter 3—Seller Requirements for Small Balance Commercial Loan**Representations and Warranties Regarding Small Balance Commercial Loans****Lawful Occupation**

The Mortgaged Property is lawfully occupied under applicable law; all inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities. No improvement located on or being part of any Mortgaged Property is in violation of any applicable zoning law or regulation.

No Advances

The Seller has not advanced any monthly payment required under the terms of the Note or induced, solicited or received any advance of funds from a party other than the owner of the related Mortgaged Property (or any tenant required to make its lease payments directly to the holder of the related Small Balance Commercial Loan), directly or indirectly, for the payment of any amount required by the Mortgage Note or Mortgage.

Consolidated Principal Balance

Any principal advances made to the Borrower prior to the Purchase Date have been consolidated with the outstanding principal amount secured by the Security Instrument, and the secured principal amount, as consolidated, bears a single interest rate and single repayment term. The lien of the Security Instrument securing the consolidated principal amount is expressly insured as having first lien priority with respect to each Small Balance Commercial Loan by a title insurance policy, an endorsement to the policy insuring the mortgagee's consolidated interest or by other title evidence acceptable pursuant to the *Deutsche Bank Correspondent Lending Seller Guides*. The consolidated principal amount does not exceed the original principal amount of the Small Balance Commercial Loan.

Due on Sale

Each Security Instrument contains a provision for the acceleration of the payment of the unpaid principal balance of the related Small Balance Commercial Loan in the event the related Mortgaged Property is sold without the prior consent of the mortgagee thereunder.

Qualified Mortgage

Each Small Balance Commercial Loan constitutes a "qualified mortgage" under Section 860G(a)(3)(A) of the Code and Treasury Regulation Section 1.860G-2(a)(l).

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Legal Capacity

All parties to the Note had the legal capacity to execute the Note and the Security Instrument, and the Note and the Security Instrument have been duly executed by such parties.

Insurance

No Mortgagor is offered or required to purchase single premium credit insurance in connection with the origination of the related Small Balance Commercial Loan.

Mobile Housing

The Note is primarily secured by a mortgage on real property, and not by any mobile home treated as real estate under applicable state law.

MERS

With respect to each Small Balance Commercial MERS Loan, a MIN has been assigned by MERS and such MIN is accurately provided pursuant to the *Deutsche Bank Correspondent Lending Seller Guides*. The related assignment of Mortgage to MERS has been duly and properly recorded. With respect to each Small Balance Commercial MERS Loan, the Seller has not received any notice of liens or legal actions with respect to such Small Balance Commercial Loan and no such notices have been electronically posted by MERS.

Releases of Mortgaged Property

No Note or Security Instrument requires the mortgagee to release all or any material portion of the related Mortgaged Property that was included in the valuation for such Mortgaged Property, and/or generates income, from the lien of the related Security Instrument except upon payment in full of all amounts due under the related Small Balance Commercial Loan, or upon satisfaction of the defeasance provisions of such Small Balance Commercial Loan, other than the Small Balance Commercial Loans that require the mortgagee to grant a release of a portion of the related Mortgaged Property upon (a) the satisfaction of certain legal and underwriting requirements where the portion of the related Mortgaged Property permitted to be released was not considered by the Seller to be material in underwriting the Small Balance Commercial Loan or, in the case of a substitution, where the Mortgagor is entitled to substitute a replacement parcel at its unilateral option upon the satisfaction of specified conditions, and/or (b) the payment of a release price and prepayment consideration in connection therewith, consistent with the Seller's normal multi-family, commercial and mixed-use mortgage lending practices (as applicable). Except as described in the prior sentence (other than with respect to defeasance and substitution), no Small Balance Commercial Loan permits the full or partial release or substitution of collateral unless (1) the Mortgagor is entitled to substitute a replacement parcel at its unilateral option upon



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satisfaction of specified conditions, and (2) the mortgagee or servicer can require the Mortgagor to provide an opinion of tax counsel to the effect that such release or substitution of collateral (a) would not constitute a “significant modification” of such Small Balance Commercial Loan within the meaning of Treas. Reg. §1.1001-3 and (b) would not cause such Small Balance Commercial Loan to fail to be a “qualified mortgage” within the meaning of Section 860G(a)(3)(A) of the Code. The Small Balance Commercial Loan Documents with respect to each Small Balance Commercial Loan that permits the full or partial release or substitution of collateral requires the related Mortgagor to bear the cost of such opinion.

Cross-Collateralization

The Note is not secured by a lien on any real property other than the lien created by the related Security Instrument, and the Security Instrument was not given to secure the performance of any obligation other than the obligations of the Mortgagor thereunder, under such Note and under any other documents executed in connection with the Small Balance Commercial Loan. No default or event of default shall occur under the Small Balance Commercial Loan by reason of a default in respect of any other obligation not directly related to the Small Balance Commercial Loan and no Person other than the holder of the Note may declare a default or accelerate the related indebtedness under the related Note or Security Instrument.

Commercial Tenants

If one or more commercial tenants lease a portion of the Mortgaged Property, each such tenant is conducting business only in that portion of the Mortgaged Property covered by its space lease. All tenants under space leases occupy the Mortgaged Property as tenants only. No space lease contains an option to purchase, right of first refusal to purchase, or any other similar provision that adversely affects the Small Balance Commercial Loan or that might adversely affect the rights of Seller. The Mortgaged Property is not subject to any lease other than the space leases described in the rent roll contained in the Mortgage File, and no person has any possessory interest in, or right to occupy, the Mortgaged Property except under and pursuant to such a space lease. Unless disclosed in writing to Seller, each such lease is unconditionally subordinate to the Mortgage either pursuant to its terms or a recorded subordination agreement. No space lease has the benefit of a non-disturbance agreement that would be considered unacceptable to prudent institutional lenders. Unless previously approved in writing by Seller, no space lease has the benefit of a non-disturbance agreement.

Negative Amortization

Each Mortgage Note requires a Monthly Payment, which is sufficient to fully amortize the outstanding principal balance as of the first day of such period over the amortization period and to pay interest at the related Mortgage Interest Rate. If the Mortgage Interest Rate changes on an Adjustment Date, the then

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outstanding principal balance will be reamortized over the remaining life of the Small Balance Commercial Loan. No Small Balance Commercial Loan contains terms or provisions which would result in negative amortization.

Environmental Conditions

Each Small Balance Commercial Loan will be covered by an environmental insurance policy (the "Environmental Insurance Policy") issued by Steadfast Insurance Company, Quanta Insurance Group, or a comparable insurance company acceptable to the DB Structured Products, Inc. in its reasonable discretion and having a Standard & Poor's Ratings Services claims paying ability rating of "AA" or higher. Such insurance policy shall cover losses resulting from an environmental condition on a Mortgaged Property after the default of the related Mortgagor and the insured amount under each such insurance policy, in the aggregate, will be equal to twenty million (\$20,000,000) or 20% of the aggregate outstanding loan balance. In the event that the Seller has obtained an environmental site assessment meeting ASTM standards and assessing all hazards generally assessed for similar properties (as of the date of such assessment), including type, use and tenants for such similar properties ("Environmental Report") with respect to any Mortgaged Property in connection with the origination of any Small Balance Commercial Loan, the Seller shall provide such Environmental Report to the DB Structured Products, Inc.

With respect to each Mortgaged Property for which an Environmental Report was prepared, other than as disclosed in such Environmental Report (X) no Hazardous Substance is present on such Mortgaged Property, such that (1) the value, use or operations of such Mortgaged Property is materially and adversely affected, or (2) under applicable federal, state or local law and regulations, (i) such Hazardous Substance could be required to be eliminated, remediated or otherwise responded to at a cost or in a manner materially and adversely affecting the value, use or operations of the Mortgaged Property before such Mortgaged Property could be altered, renovated, demolished or transferred or (ii) the presence of such Hazardous Substance could (upon action by the appropriate governmental authorities) subject the owner of such Mortgaged Property, or the holders of a security interest therein, to liability for the cost of eliminating, remediating or otherwise responding to such Hazardous Substance or the hazard created thereby at a cost or in a manner materially and adversely affecting the value, use or operations of the Mortgaged Property, and (Y) such Mortgaged Property is in material compliance with all applicable federal, state and local laws and regulations pertaining to Hazardous Substance or environmental hazards, any noncompliance with such laws or regulations does not have a material adverse effect on the value, use or operations of such Mortgaged Property and neither Seller nor, the related Mortgagor or any current tenant thereon, has received any notice of any violation or potential violation of any such law or regulation. With respect to any condition disclosed in the Environmental Report, which condition constituted a violation of applicable laws or regulations or would materially and adversely affect the value, use or operations of the related Mortgaged Property if not remedied, such condition has either been satisfactorily remedied, consistent with prudent multi-family, commercial and mixed-use mortgage



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lending practices (as applicable), or the applicable Small Balance Commercial Loan Documents contain provisions which address such condition to the satisfaction of the Seller, consistent with prudent multi-family, commercial and mixed-use mortgage lending practices (as applicable), and adequate funding or resources, consistent with prudent multi-family, commercial and mixed-use mortgage lending practices (as applicable), were available to remedy or otherwise respond to such condition. Each Mortgage requires the related Mortgagor to comply with all applicable federal, state and local environmental laws and regulations.

Assignment of Leases and Rents

Any assignment of leases, rents and profits or similar document or instrument executed by the related Mortgagor in connection with the origination of the related Small Balance Commercial Loan, assigning to the mortgagee all of the income, rents and profits derived from the ownership, operation, leasing or other disposition of all or a portion of such Mortgaged Property, in the form which such assignment or similar agreement was duly executed, acknowledged and delivered, as such document may be amended, modified, renewed or extended from time to time (the "Assignment of Leases") related to and delivered in connection with each Small Balance Commercial Loan establishes and creates a valid and, subject to the exceptions set forth in the Section titled "Liens" herein, enforceable first priority collateral assignment in the related Mortgagor's interest in all leases, sub-leases, licenses or other agreements pursuant to which any person is entitled to occupy, use or possess all or any portion of the real property subject to the related Mortgage, subject to legal limitations of general applicability to mortgage loans similar to the Small Balance Commercial Loans, and the Mortgagor and each assignor of such Assignment of Leases to the Seller have the full right to assign the same. The related assignment of any Assignment of Leases not included in a Mortgage has been executed and delivered to the DB Structured Products, Inc. in blank, is otherwise in recordable form and constitutes a legal, valid and binding assignment, sufficient to convey to the assignee named therein (assuming that the assignee has the capacity to acquire such Assignment of Leases) all of the assignor's right, title and interest in, to and under such Assignment of Leases.

Defeasance and Assumption Costs

No Small Balance Commercial Loan provides that it can be defeased prior to the date that is two years after the related origination date. If the related Small Balance Commercial Loan Documents provide for defeasance, such documents provide that the related Mortgagor is responsible for the payment of all reasonable costs and expenses of DB Structured Products, Inc. incurred in connection with the defeasance of such Small Balance Commercial Loan and the release of the Mortgaged Property. The related Small Balance Commercial Loan Documents require the related Mortgagor to pay all reasonable costs and expenses of lender associated with the approval of an assumption of such Small Balance Commercial Loan.

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There are no provisions in any Note, Assignment of Leases, Mortgage or related Small Balance Commercial Loan Documents with respect to any Small Balance Commercial Loan, nor any other agreements or enforceable understandings with any Mortgagor, Mortgagor principal or Guarantor, which restrict the dissemination of information regarding any Mortgagor, Mortgagor principal, Guarantor or Mortgaged Property by the owner or holder of the Small Balance Commercial Loan or requires such owner or holder to treat any information regarding any Mortgagor, Mortgagor principal, Guarantor or Mortgaged Property as confidential; provided, however that state and federal laws may specifically limit the use and/or dissemination of such information.

Commercial Mortgage Loan

Each Mortgage is a “commercial loan” and not a “consumer loan” as such terms are defined under the Federal Truth in Lending Act, 12 U.S.C. § 226 et seq. and associated regulations.

Residential Leases

If the Mortgaged Property is a Multifamily Property, at least 80% of the related Mortgage Property (calculated on the basis of net rentable space) is used for residential purposes and at least 80% of the gross income from the related Mortgaged Property is derived from residential leases. All of the Small Balance Commercial Loans secured by properties that have residential units have five or more residential units.

Yield Maintenance Premiums and Prepayment Premiums

Subject to the requirements and restrictions of governing law, the Small Balance Commercial Loan Documents and the *Deutsche Bank Correspondent Lending Seller Guides*, each yield maintenance premium and prepayment premium is consistent with that charged by the Seller in its customary lending practices with respect to mortgage loans of the size and character of the Small Balance Commercial Loans. All prepayment premiums and yield maintenance premiums constitute “customary prepayment penalties” within the meaning of Treasury Regulations Section 1.860G-1(b)(2).

Restricted Properties

None of the Small Balance Commercial Loans are secured by properties that have a free standing restaurant, bar, fast food establishment, liquor store, hotel, motel, bed and breakfast establishment, vacant or unimproved land, golf course, marina, theater, health club, campground, day care, adult care, church, school, funeral home, adult establishment, special purpose establishment, gas station, auto repair, car wash, dry cleaner or any other similarly environmentally sensitive establishment on the property.

Chapter 3—Seller Requirements for Small Balance Commercial Loan

Additional Representations and Warranties Regarding the Bulk Small Balance Commercial Mortgage Loans

If the Mortgaged Property is described as Multifamily Property, the Small Balance Commercial Loan is a "loan... secured by an interest in residential real property within the meaning of Section 7701(a)(19)(C)(v) of the Code.

Additional Representations and Warranties Regarding the Bulk Small Balance Commercial Mortgage Loans

With respect to each Bulk Small Balance Commercial Whole Loan Transfer, in addition to the representations and warranties in this Chapter 3 set forth in the subsection titled "Representations and Warranties Regarding Small Balance Commercial Loans" (other than those representations and warranties under the headings "Underwriting", "Title Insurance" and "Compliance by Others") and in the related Bulk Commitment Letter, the Seller hereby makes the following representations and warranties as to each Bulk Small Balance Commercial Mortgage Loan, as of the related Closing Date for such Bulk Small Balance Commercial Mortgage Loan or as of such date specifically provided herein:

Fair Credit Reporting Act

The Seller and any predecessor servicer has fully furnished, in accordance with Reporting Act the Fair Credit and its implementing regulations, accurate and complete information (e.g., favorable and unfavorable) on its borrower credit files to Equifax, Experian and Trans Union Credit Information Company (three of the credit repositories), on a monthly basis; and the Seller will fully furnish, in accordance with the Fair Credit Reporting Act and its implementing regulations, accurate and complete information (e.g., favorable and unfavorable) on its borrower credit files to Equifax, Experian and Trans Credit Information Company (three of the credit repositories), on a monthly basis.

Credit Reporting

The Seller will transmit full-file credit reporting data for each Bulk Small Balance Commercial Mortgage Loan pursuant to Fannie Mae Guide Announcement 95-19 and for each Bulk Small Balance Commercial Mortgage Loan, Company agrees it shall report one of the following statuses each month as follows: new origination, current, delinquent (30-, 60-, 90-days, etc.), foreclosed, or charged-off.

Underwriting Guidelines

Each Bulk Small Balance Commercial Mortgage Loan was underwritten in accordance with the Underwriting Guidelines in effect at the time the Bulk Small Balance Commercial Mortgage Loan was originated.

Chapter 3—Seller Requirements for Small Balance Commercial Loan

Additional Representations and Warranties Regarding the Bulk Small Balance Commercial Mortgage Loans**Prepayment Penalties**

Each Prepayment Charge, if any, has complied in all material respects with any and all requirements of any federal, state or local law including, without limitation, usury, truth in lending, real estate settlement procedures, consumer credit protection, equal credit opportunity, fair housing, disclosure laws or all predatory and abusive lending laws applicable to the origination and servicing of mortgage loans of a type similar to the Bulk Small Balance Commercial Mortgage Loans have been complied with and the consummation of the transactions contemplated hereby will not involve the violation of any such laws.

Amortization

Payments on the Bulk Small Balance Commercial Mortgage Loan shall commence (with respect to any newly originated Bulk Small Balance Commercial Mortgage Loans) or commenced no more than sixty days after the proceeds of the Bulk Small Balance Commercial Mortgage Loan were disbursed. The Bulk Small Balance Commercial Mortgage Loan bears interest at the Mortgage Interest Rate. With respect to each Bulk Small Balance Commercial Mortgage Loan, the Mortgage Note is payable on the first day of each month in Monthly Payments, which, (A) in the case of a Fixed Rate Bulk Small Balance Commercial Mortgage Loan, are sufficient to fully amortize the original principal balance over the original term thereof and to pay interest at the related Mortgage Interest Rate, (B) in the case of an Adjustable Rate Bulk Small Balance Commercial Mortgage Loan, are changed on each Adjustment Date, and in any case, are sufficient to fully amortize the original principal balance over the original term thereof and to pay interest at the related Mortgage Interest Rate and (C) in the case of a Balloon Loan, are based on a fifteen (15) or thirty (30) year amortization schedule, as set forth in the related Mortgage Note, and a final monthly payment substantially greater than the preceding monthly payment which is sufficient to amortize the remaining principal balance of the Balloon Loan and to pay interest at the related Mortgage Interest Rate. No Balloon Loan has an original stated maturity of less than seven (7) years. The Index for each Adjustable Rate Bulk Small Balance Commercial Mortgage Loan is as defined in the related Bulk Mortgage Loan Schedule. With respect to each Bulk Small Balance Commercial Mortgage Loan identified on the Bulk Mortgage Loan Schedule as an interest-only Bulk Small Balance Commercial Mortgage Loan, the interest-only period shall not exceed the period specified on the Bulk Mortgage Loan Schedule and following the expiration of such interest-only period, the remaining Monthly Payments shall be sufficient to fully amortize the original principal balance over the remaining term of the Bulk Small Balance Commercial Mortgage Loan. With respect to each Small Balance Commercial Mortgage Loan, the Mortgage Note does not permit Negative Amortization. No Bulk Small Balance Commercial Mortgage Loan is a Convertible Bulk Small Balance Commercial Mortgage Loan.

Chapter 3—Seller Requirements for Small Balance Commercial Loan

Survival of Representations and Warranties

Survival of Representations and Warranties

The representations and warranties made by the Seller will survive:

- Any examination by or on behalf of DB Structured Products, Inc. or its assignee or designee;
- The purchase of the Small Balance Commercial Loan by DB Structured Products, Inc. or its assignee or designee;
- The later assignment of the Small Balance Commercial Loan and/or the servicing rights to any third party;
- Liquidation of the Small Balance Commercial Loan;
- Any suspension or termination of the Seller privileges; and
- The sale, bankruptcy or insolvency of the Seller.

Seller Default

This section describes conditions under which a Seller default occurs.

Events of Seller Default

Any of the following events constitute an Event of Seller Default:

- The Seller has not complied with the requirements, terms or conditions set forth or incorporated by reference in the *Deutsche Bank Correspondent Lending Seller Guides* including, but not limited to, the Disqualification or Suspension Section; or
- The Seller has breached any agreement set forth or incorporated by reference in the Seller Agreement; or
- The Seller has made false or misleading representations or warranties to DB Structured Products, Inc., as described in the Representation and Warranty sections of this Chapter, or has failed to provide DB Structured Products, Inc. with information that is true, complete and accurate as to the documentation in the Small Balance Commercial Loan file; or
- The Borrower(s) or any other person or entity involved in the Small Balance Commercial Loan transaction or in the underwriting or documentation thereof has made any false representation and/or has failed to provide information that is true, complete and accurate, whether or not the Seller had knowledge of such misrepresentation or incorrect information.

DB Structured Products, Inc. is not required to demand repurchase within any particular period of time as a result of an Event of Seller Default.

DB Structured Products, Inc. may use any remedy in the *Deutsche Bank Correspondent Lending Seller Guides*. Its use of one or more remedies in conjunction with a single Event of Seller Default will not prohibit DB

Chapter 3—Seller Requirements for Small Balance Commercial Loan

Repurchase

Structured Products, Inc. from exercising: a) one or more other remedies in connection with the same Event of Seller Default, and/or b) any other rights which it may have at law or in equity that it deems applicable to protect its interest.

Delay or failure by DB Structured Products, Inc. to use any of its remedies does not create a waiver of that remedy in the future as to the same or any other Seller Default.

Incorrect Representations or Warranties by Seller

If Seller discovers, or obtains knowledge of any circumstances that would reasonably cause the Seller to believe that any of the representations or warranties are untrue, inaccurate or incomplete, the Seller is in default. The Seller will promptly give to DB Structured Products, Inc. an officer's certificate of the Seller certifying as to the circumstances believed to cause the default and summarize the action that the Seller intends to take (or has taken) to correct the default.

If any of the representations or warranties provided by the Seller (contained in the *Deutsche Bank Correspondent Lending Seller Guides*) is untrue, inaccurate or incomplete, the Seller is in default, and in addition to any other remedies available to DB Structured Products, Inc. contained in the *Deutsche Bank Correspondent Lending Seller Guides*, the Seller, at its expense, will take such action as is necessary to cure the default within the lesser of:

- 30 calendar days after the date of DB Structured Products, Inc.'s notice to the Seller;
- A shorter time period if dictated by statute or regulation; or
- A shorter time period if dictated by a separate agreement between Seller and DB Structured Products, Inc. or one of its affiliates.

Repurchase

This section describes Seller repurchase requirements.

Repurchase Obligation

DB Structured Products, Inc. may, in its sole discretion, determine that an Event of Seller Default or Early Delinquency Repurchase has occurred with respect to a specific Small Balance Commercial Loan. If there is an Event of Default with respect to a specific Small Balance Commercial Loan and such default is not cured within the required cure period, if any, the Seller agrees to repurchase the Small Balance Commercial Loan within thirty (30) calendar days of DB Structured Products, Inc.'s repurchase demand.

Any delay in making such a demand shall not constitute a waiver by DB Structured Products, Inc. of any of its rights or remedies.

Chapter 3—Seller Requirements for Small Balance Commercial Loan

Late Charge

The Seller's failure to deliver all required Small Balance Commercial Loan Documents is an Event of Seller Default and as such the Seller must immediately repurchase the Small Balance Commercial Loan upon the request of DB Structured Products, Inc.

Early Delinquency Repurchase

The Seller is required to repurchase, at the sole discretion of DB Structured Products, Inc. any Small Balance Commercial Loan DB Structured Products, Inc. purchased from the Seller if any of the first [two (2)] payments due after the Purchase Date are [sixty (60)] days delinquent.

Repurchase Price

If the Seller is obligated to repurchase a Small Balance Commercial Loan, the Seller must pay DB Structured Products, Inc. a repurchase price equal to the sum of:

The unpaid principal balance at the time of repurchase;

The greater of the purchase price or par multiplied by the unpaid principal balance at the time of repurchase;

Accrued and unpaid interest on the above amount through the date the Small Balance Commercial Loan is repurchased; and

All out-of-pocket costs and expenses of any kind incurred by DB Structured Products, Inc. and/or the primary servicer of the Small Balance Commercial Loan in connection with the Small Balance Commercial Loan, including, but not limited to estimated or actual repairs, foreclosure and insurance costs and attorneys' fees.

The Seller agrees that it will pay all documentary stamp taxes, recording fees, transfer taxes and all other expenses payable in connection with the repurchase and will indemnify and hold harmless DB Structured Products, Inc. and the servicer against all losses, costs and expenses, including attorney fees, and any other amounts as set forth under the section "Indemnification", from such required repurchases or the breach giving rise to the repurchase.

Late Charge

If the Seller fails to pay any obligation due DB Structured Products, Inc. prior to or on the due date, DB Structured Products, Inc. has the right to charge the Seller a late charge. The late charge will be calculated at 3% over Prime Rate (based on a 360 day year) on the overdue amount for the number of days the amount is past due.

Chapter 3—Seller Requirements for Small Balance Commercial Loan

Disqualification or Suspension**Disqualification or Suspension**

Based on grounds for disqualification or suspension, DB Structured Products, Inc. may disqualify or suspend the Seller from selling Small Balance Commercial Loans to DB Structured Products, Inc., or take any other action deemed appropriate by DB Structured Products, Inc. The Seller will be ineligible to obtain new Commitments during any period of disqualification or suspension. Unsettled Commitments held by a disqualified or suspended Seller will be honored at the sole discretion of DB Structured Products, Inc. DB Structured Products, Inc. will determine the length of any suspension period and may prescribe the terms and conditions for reinstatement.

Grounds for Disqualification and/or Suspension

DB Structured Products, Inc. may disqualify or suspend Seller for any of the following reasons:

- Impending or actual insolvency of the Seller;
- The filing of voluntary petition by the Seller under the federal bankruptcy laws or under any state bankruptcy or insolvency laws;
- The filing of an answer by the Seller in an involuntary proceeding admitting insolvency or inability to pay debts;
- The entry of an order for relief under the federal bankruptcy laws with respect to the Seller;
- The appointment of a trustee or receiver for the Seller or its property;
- The execution by the Seller of an assignment for the benefit of creditors;
- The failure of the Seller to obtain a vacation or stay of involuntary proceedings brought for its reorganization, dissolution, or liquidation;
- Any other change in the financial or organizational status of the Seller that, in the opinion of DB Structured Products, Inc., could adversely affect DB Structured Products, Inc. or any Small Balance Commercial Loans sold to DB Structured Products, Inc.;
- The placement of the Seller on probation or restriction of its activities in any manner by a federal or state government agency, including Fannie Mae, Freddie Mac or HUD;
- The determination by DB Structured Products, Inc. that the Seller's financial obligations are disproportionate to its capital and/or assets;
- The Seller's failure to deliver documents required by DB Structured Products, Inc.;



Chapter 3—Seller Requirements for Small Balance Commercial Loan**Disqualification or Suspension**

- Misstatement or omission of any material fact on any application, certification, or other document submitted to DB Structured Products, Inc.;
- The Seller's assignment or attempt to assign its interests, rights, or obligations under the Seller Agreement without prior written consent by DB Structured Products, Inc.;
- The occurrence of an Event of Seller Default;
- The Seller's failure to repurchase any Small Balance Commercial Loan upon the written notification by DB Structured Products, Inc.;
- The Seller's inability to meet the approval standards of any insurer or other entity that provides insurance or other credit enhancements in connection with the efforts of DB Structured Products, Inc. to sell the Small Balance Commercial Loans, or borrow based on the collateral value of the Small Balance Commercial Loans;
- The Seller's failure to maintain a qualified Small Balance Commercial Loan origination and acceptable on-going quality control program, adequate facilities and written policies and procedures to ensure the investment quality of Small Balance Commercial Loans sold to DB Structured Products, Inc.; or
- The Seller's failure to remit payment of Automated Underwriting System usage within sixty (60) days of billing date.

Right of Set-Off

In the Event of Seller Default, DB Structured Products, Inc. is hereby authorized by the Seller, to the fullest extent of the law, without prior notice to the Seller, the right of set-off and the ability to apply any or all funds owed by DB Structured Products, Inc. to the Seller against any or all outstanding repurchase, indemnification or other obligations of any kind owed by Seller to DB Structured Products, Inc.

The Seller hereby expressly waives any right to receive prior notice from DB Structured Products, Inc. concerning the use of Right of Set-Off by DB Structured Products, Inc. The rights of DB Structured Products, Inc. under this section are in addition to any other rights and remedies that DB Structured Products, Inc. may have.

Early Payoff Policy

For Small Balance Commercial Loans without a prepayment penalty, if the Borrower fully pays off a Small Balance Commercial Loan within the first [12] months following DB Structured Products, Inc.'s Purchase Date, the Seller must reimburse DB Structured Products, Inc. for any premium paid above par within [thirty (30)] days of such payoff. For Small Balance Commercial Loans with a prepayment penalty, any premium above par in excess of the

Chapter 3—Seller Requirements for Small Balance Commercial Loan

Disqualification or Suspension

prepayment penalty must be reimbursed to DB Structured Products, Inc. within thirty (30) days of such payoff.

Indemnification

The Seller shall indemnify DB Structured Products, Inc. from and hold it harmless against all losses, damages, penalties, fines, forfeitures, court costs and attorneys' fees, judgments, and any other costs, fees, and expenses resulting from any Event of Seller Default, including but not limited to any act or failure to act or any breach of any warranty, obligation or representation embodied in or made pursuant to the Seller Agreement, or from any claim, demand, defense or assertion against or involving DB Structured Products, Inc. based on or grounded upon, or resulting from such breach or a breach of any representation, warranty or obligation made by DB Structured Products, Inc. in reliance upon any warranty, obligation or representation made by the Seller embodied in or made pursuant to the Seller Agreement.

The Seller also shall indemnify DB Structured Products, Inc. and hold it harmless against all court costs, attorneys' fees and any of the costs, fees and expenses incurred by DB Structured Products, Inc. in enforcing the Seller Agreement. The obligations of the Seller under this section shall survive the Purchase Date, the termination of the Seller Agreement and the disqualification or suspension of the Seller